

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of

Review of the Section 251 Unbundling  
Obligations of Incumbent Local Exchange  
Carriers

CC Docket No. 01-338

Implementation of the Local Competition  
Provisions of the Telecommunications Act of  
1996

CC Docket No. 96-98

Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

CC Docket No. 98-147

**COMMENTS OF TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.**

Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”), pursuant to the Commission’s January 7, 2004 Public Notice, DA 04-7, hereby submits these comments on the “Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets” (“Waiver Petition”) in the above captioned dockets.

**INTRODUCTION**

TLD is a competitive carrier operating in Puerto Rico since 1989 and offers telecommunications services to a wide range of customers including the government, large, medium and small businesses, and residential customers. Its services include intrastate, interstate and international long distance, prepaid calling cards, and local service offered through resale among others. TLD has recently taken its first steps to migrate from offering services through resale to purchasing unbundled network elements (“UNEs”) from the Puerto Rico Telephone Company (“PRTC”).

Based on its experience in Puerto Rico, TLD concurs with the finding of the Puerto Rico Telecommunications Regulatory Board (“Board”) that entry into the Enterprise Market in Puerto Rico is impaired without access to unbundled local switching to serve this market. In fact, given the underdeveloped state of competition in the Puerto Rican telecommunications market, as well as the historically poor operational performance exhibited by PRTC, the only Incumbent Local Exchange Carrier (“ILEC”) operating on the island, TLD submits that strong regulatory action is required in order to bring Puerto Rico’s telecommunications market up to par with that of other jurisdictions within the United States. Thus the Commission should grant the Board’s Waiver Petition.

### COMMENTS

**1. A granular impairment evaluation was performed in Puerto Rico as required by the Commission**

On August 21, 2003, the Commission released its Triennial Review Order (“TRO”)<sup>1</sup>, which further clarified the Commission’s “impairment” standard, as well the role of the local state commissions in making more granular impairment determinations in certain cases.

In its TRO, the Commission established the requirements for unbundling local switching network elements based on the targeted market. Specifically, the Commission found that an unbundling obligation does not exist for Enterprise Market or high-capacity switching (DS1 and above) absent a state commission finding of impairment. In making such finding, state commissions were required to perform a granular market analysis and determine whether competitors are impaired from entering the Enterprise Market without access to the high-capacity switching element. Those

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<sup>1</sup>*Report and Order and Order on Remand And Further Notice of Proposed Rulemaking, In the Matters of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket Nos. 01-338, 96-98, and 98-147, February 20, 2003, released on August 21, 2003.

state commissions making a finding of impairment were then required to file petitions with the Commission seeking a waiver of its rules within ninety (90) days of the effective date of the TRO.<sup>2</sup>

In response to the Commission's mandate, the Puerto Rico Telecommunications Regulatory Board conducted the required granular market analysis, obtained the necessary market, business, and technical information from the telecommunications companies, and heard the various participating parties. After considering the economic and operational characteristics of the relevant markets, the Board concluded that an impairment exists with regards to high capacity switching in the various Enterprise Markets across Puerto Rico pursuant to the conditions set forth in 47 C.F.R. § 51.319(d)(3)(i). After reaching its finding of impairment, the Board then proceeded to file its Waiver Petition with the Commission on December 30, 2003.

**2. The Puerto Rico Telecommunications Regulatory Board's finding of impairment is amply supported**

Local competition in Puerto Rico is still not well-developed and economic and operational barriers exist that prevent competing carriers from self-provisioning high-capacity switches. As a result, the deployment of competitive high-capacity switches in Puerto Rico has not been significant as pointed out by Board in its Waiver Petition.<sup>3</sup>

TLD agrees with the above Board finding and would like to add that at present, self-deployment of switching capacity is not a viable alternative in Puerto Rico because the costs of acquiring a switch for the local market is extremely high in relation to its potential for generating revenues. Competitors must rely on PRTC to provide their services and generally are discouraged

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<sup>2</sup>47 C.F.R. § 51.319(d)(5)(i).

<sup>3</sup>Waiver Petition at 16.

from investing by PRTC's track record of unresponsiveness to service requests, non-compliance with interconnection agreement terms, failure to provide facilities, etc. In other words, there is a high risk that a switch acquired today to serve areas within Puerto Rico will remain idle for several months while problems related to the provisioning of UNE loops, cross connects, transport, collocation, meet points and such are resolved in order to initiate service to new customers. Such difficulties have resulted in a high-cost and high-risk business environment for competing telecommunications companies in Puerto Rico that has significantly hindered the growth of facilities-based competition.

Although the Commission has pointed out that, in general, self-provisioning of the high capacity switch in combination with the use of unbundled loops, collocation, and backhaul transport has proven to be a successful competitive approach, TLD's experience with PRTC, as described below, leads to the conclusion that such an approach is currently unrealistic in Puerto Rico and PRTCs' promise that it is "willing and able" to provide the necessary elements to allow this form of competition is not credible. Furthermore no evidence has been provided, as the Board correctly points out in its Waiver Petition,<sup>4</sup> that such an approach is currently workable.

For example, TLD's first hand experience with PRTC within the resale environment has revealed that PRTC's operational support systems are outdated and its internal procedures inadequate. The situation has required TLD to engage in constant follow-up and lengthy escalation processes with respect to ordering, billing, etc. Similarly, TLD has encountered numerous delays and problems while attempting to negotiate and/or enforce interconnection terms and performance standards with PRTC. In addition, TLD is well aware of the problems other competing companies have encountered in ordering UNEs from PRTC and completing collocation arrangements. Finally,

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<sup>4</sup>Waiver Petition at 17.

the lack of available competitive facilities in Puerto Rico ensures that these problems cannot be avoided even partially. Thus, the competitive scenario described by the Commission is simply non-existent in Puerto Rico

As discussed above, and compared to the general experience in the United States, many economic and operational barriers remain that have not allowed the Enterprise Market in Puerto Rico to reach a level of maturity sufficient to remove the impairment to providing high-capacity business service through self-deployment of switching capacity and/or transport facilities along with the use of UNE loops. In its Waiver Petition, the Board has pointed to PRTC's inability to adequately provide UNE-P circuits and its lengthy and highly problematic collocation process as examples illustrating the types of problems that have kept the Puerto Rico local telecommunications market from keeping pace with the competitive evolution seen in other states.<sup>5</sup> The "impairment" found in Puerto Rico cannot be more evident. Therefore, the Commission should grant the Board's Waiver Petition.

RESPECTFULLY SUBMITTED,

TELEFÓNICA LARGA DISTANCIA DE  
PUERTO RICO, INC..

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<sup>5</sup> Waiver Petition at 21-22.